

AMENDMENTS TO LB 489

Introduced by Revenue

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 77-2711, Revised Statutes Cumulative
4 Supplement, 2010, is amended to read:

5 77-2711 (1)(a) The Tax Commissioner shall enforce
6 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and
7 enforce rules and regulations relating to the administration and
8 enforcement of such sections.

9 (b) The Tax Commissioner may prescribe the extent to
10 which any ruling or regulation shall be applied without retroactive
11 effect.

12 (2) The Tax Commissioner may employ accountants,
13 auditors, investigators, assistants, and clerks necessary for the
14 efficient administration of the Nebraska Revenue Act of 1967 and
15 may delegate authority to his or her representatives to conduct
16 hearings, prescribe regulations, or perform any other duties
17 imposed by such act.

18 (3)(a) Every seller, every retailer, and every person
19 storing, using, or otherwise consuming in this state property
20 purchased from a retailer shall keep such records, receipts,
21 invoices, and other pertinent papers in such form as the Tax
22 Commissioner may reasonably require.

23 (b) Every such seller, retailer, or person shall keep

1 such records for not less than three years from the making of such
2 records unless the Tax Commissioner in writing sooner authorized
3 their destruction.

4 (4) The Tax Commissioner or any person authorized in
5 writing by him or her may examine the books, papers, records, and
6 equipment of any person selling property and any person liable for
7 the use tax and may investigate the character of the business of
8 the person in order to verify the accuracy of any return made or,
9 if no return is made by the person, to ascertain and determine
10 the amount required to be paid. In the examination of any person
11 selling property or of any person liable for the use tax, an
12 inquiry shall be made as to the accuracy of the reporting of city
13 sales and use taxes for which the person is liable under the Local
14 Option Revenue Act or sections 13-319, 13-324, and 13-2813 and
15 the accuracy of the allocation made between the various counties,
16 cities, villages, and municipal counties of the tax due. The Tax
17 Commissioner may make or cause to be made copies of resale or
18 exemption certificates and may pay a reasonable amount to the
19 person having custody of the records for providing such copies.

20 (5) The taxpayer shall have the right to keep or store
21 his or her records at a point outside this state and shall make his
22 or her records available to the Tax Commissioner at all times.

23 (6) In administration of the use tax, the Tax
24 Commissioner may require the filing of reports by any person or
25 class of persons having in his, her, or their possession or custody
26 information relating to sales of property, the storage, use, or
27 other consumption of which is subject to the tax. The report shall

1 be filed when the Tax Commissioner requires and shall set forth the
2 names and addresses of purchasers of the property, the sales price
3 of the property, the date of sale, and such other information as
4 the Tax Commissioner may require.

5 (7) It shall be a Class I misdemeanor for the Tax
6 Commissioner or any official or employee of the Tax Commissioner,
7 the State Treasurer, or the Department of Administrative Services
8 to make known in any manner whatever the business affairs,
9 operations, or information obtained by an investigation of records
10 and activities of any retailer or any other person visited
11 or examined in the discharge of official duty or the amount
12 or source of income, profits, losses, expenditures, or any
13 particular thereof, set forth or disclosed in any return, or
14 to permit any return or copy thereof, or any book containing
15 any abstract or particulars thereof to be seen or examined by
16 any person not connected with the Tax Commissioner. Nothing in
17 this section shall be construed to prohibit (a) the delivery to
18 a taxpayer, his or her duly authorized representative, or his
19 or her successors, receivers, trustees, executors, administrators,
20 assignees, or guarantors, if directly interested, of a certified
21 copy of any return or report in connection with his or her tax,
22 (b) the publication of statistics so classified as to prevent
23 the identification of particular reports or returns and the items
24 thereof, (c) the inspection by the Attorney General, other legal
25 representative of the state, or county attorney of the reports
26 or returns of any taxpayer when either (i) information on the
27 reports or returns is considered by the Attorney General to be

1 relevant to any action or proceeding instituted by the taxpayer
2 or against whom an action or proceeding is being considered or
3 has been commenced by any state agency or the county or (ii) the
4 taxpayer has instituted an action to review the tax based thereon
5 or an action or proceeding against the taxpayer for collection of
6 tax or failure to comply with the Nebraska Revenue Act of 1967 is
7 being considered or has been commenced, (d) the furnishing of any
8 information to the United States Government or to states allowing
9 similar privileges to the Tax Commissioner, (e) the disclosure of
10 information and records to a collection agency contracting with the
11 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
12 the disclosure to another party to a transaction of information
13 and records concerning the transaction between the taxpayer and
14 the other party, (g) the disclosure of information pursuant to
15 section 77-27,195 or 77-5731, or (h) the disclosure of information
16 to the Department of Labor necessary for the administration of the
17 Employment Security Law, the Contractor Registration Act, or the
18 Employee Classification Act.

19 (8) Notwithstanding the provisions of subsection (7) of
20 this section, the Tax Commissioner may permit the Postal Inspector
21 of the United States Postal Service or his or her delegates to
22 inspect the reports or returns of any person filed pursuant to the
23 Nebraska Revenue Act of 1967 when information on the reports or
24 returns is relevant to any action or proceeding instituted or being
25 considered by the United States Postal Service against such person
26 for the fraudulent use of the mails to carry and deliver false and
27 fraudulent tax returns to the Tax Commissioner with the intent to

1 defraud the State of Nebraska or to evade the payment of Nebraska
2 state taxes.

3 (9) Notwithstanding the provisions of subsection (7) of
4 this section, the Tax Commissioner may permit other tax officials
5 of this state to inspect the tax returns, reports, and applications
6 filed under sections 77-2701.04 to 77-2713, but such inspection
7 shall be permitted only for purposes of enforcing a tax law and
8 only to the extent and under the conditions prescribed by the rules
9 and regulations of the Tax Commissioner.

10 (10) Notwithstanding the provisions of subsection (7)
11 of this section, the Tax Commissioner may, upon request, provide
12 the county board of any county which has exercised the authority
13 granted by section 81-1254 with a list of the names and addresses
14 of the hotels located within the county for which lodging sales tax
15 returns have been filed or for which lodging sales taxes have been
16 remitted for the county's County Visitors Promotion Fund under the
17 Nebraska Visitors Development Act.

18 The information provided by the Tax Commissioner shall
19 indicate only the names and addresses of the hotels located within
20 the requesting county for which lodging sales tax returns have been
21 filed for a specified period and the fact that lodging sales taxes
22 remitted by or on behalf of the hotel have constituted a portion of
23 the total sum remitted by the state to the county for a specified
24 period under the provisions of the Nebraska Visitors Development
25 Act. No additional information shall be revealed.

26 (11) (a) Notwithstanding the provisions of subsection (7)
27 of this section, the Tax Commissioner shall, upon written request

1 by the Auditor of Public Accounts or the Legislative Performance
2 Audit Committee, make tax returns and tax return information open
3 to inspection by or disclosure to Auditor of Public Accounts or
4 Legislative Performance Audit Section employees for the purpose of
5 and to the extent necessary in making an audit of the Department
6 of Revenue pursuant to section 50-1205 or 84-304. Confidential
7 tax returns and tax return information shall be audited only upon
8 the premises of the Department of Revenue. All audit workpapers
9 pertaining to the audit of the Department of Revenue shall be
10 stored in a secure place in the Department of Revenue.

11 (b) No employee of the Auditor of Public Accounts or
12 Legislative Performance Audit Section shall disclose to any person,
13 other than another Auditor of Public Accounts or Legislative
14 Performance Audit Section employee whose official duties require
15 such disclosure or as provided in subsections (2) and (3) of
16 section 50-1213, any return or return information described in the
17 Nebraska Revenue Act of 1967 in a form which can be associated
18 with or otherwise identify, directly or indirectly, a particular
19 taxpayer.

20 (c) Any person who violates the provisions of this
21 subsection shall be guilty of a Class I misdemeanor. For purposes
22 of this subsection, employee includes a former Auditor of Public
23 Accounts or Legislative Performance Audit Section employee.

24 (12) For purposes of this subsection and ~~subsection~~
25 subsections (11) and (14) of this section:

26 (a) Disclosure means the making known to any person in
27 any manner a tax return or return information;

1 (b) Return information means:

2 (i) A taxpayer's identification number and (A) the
3 nature, source, or amount of his or her income, payments, receipts,
4 deductions, exemptions, credits, assets, liabilities, net worth,
5 tax liability, tax withheld, deficiencies, overassessments, or tax
6 payments, whether the taxpayer's return was, is being, or will be
7 examined or subject to other investigation or processing or (B) any
8 other data received by, recorded by, prepared by, furnished to, or
9 collected by the Tax Commissioner with respect to a return or the
10 determination of the existence or possible existence of liability
11 or the amount of liability of any person for any tax, penalty,
12 interest, fine, forfeiture, or other imposition or offense; and

13 (ii) Any part of any written determination or any
14 background file document relating to such written determination;
15 and

16 (c) Tax return or return means any tax or information
17 return or claim for refund required by, provided for, or permitted
18 under sections 77-2701 to 77-2713 which is filed with the Tax
19 Commissioner by, on behalf of, or with respect to any person
20 and any amendment or supplement thereto, including supporting
21 schedules, attachments, or lists which are supplemental to or part
22 of the filed return.

23 (13) Notwithstanding the provisions of subsection (7) of
24 this section, the Tax Commissioner shall, upon request, provide any
25 municipality which has adopted the local option sales tax under the
26 Local Option Revenue Act with a list of the names and addresses
27 of the retailers which have collected the local option sales tax

1 for the municipality. The request may be made annually and shall
2 be submitted to the Tax Commissioner on or before June 30 of
3 each year. The information provided by the Tax Commissioner shall
4 indicate only the names and addresses of the retailers. The Tax
5 Commissioner may provide additional information to a municipality
6 so long as the information does not include any data detailing
7 the specific revenue, expenses, or operations of any particular
8 business.

9 (14) (a) Notwithstanding the provisions of subsection (7)
10 of this section, the Tax Commissioner shall, upon written request,
11 provide a municipal employee certified under subdivision (b) of
12 this subsection representing a municipality which has adopted the
13 local option sales tax under the Local Option Revenue Act with
14 confidential sales tax returns and sales tax return information
15 regarding taxpayers that possess a sales tax permit and the amounts
16 remitted by such permitholders at locations within the boundaries
17 of the requesting municipality. Any written request pursuant to
18 this subsection shall provide the Department of Revenue with no
19 less than ten business days to prepare the sales tax returns
20 and sales tax return information requested. Such returns and
21 return information shall be viewed only upon the premises of the
22 department.

23 (b) Each municipality that seeks to request information
24 under subdivision (a) of this subsection shall certify to the
25 Department of Revenue one municipal employee who is authorized by
26 such municipality to make such request and review the documents
27 described in subdivision (a) of this subsection.

1 (c) No municipal employee certified by a municipality
2 pursuant to subdivision (b) of this subsection shall disclose
3 to any person any information obtained pursuant to a review by
4 that municipal employee pursuant to this subsection. A municipal
5 employee certified by a municipality pursuant to subdivision (b)
6 of this subsection shall remain subject to this subsection after
7 he or she (i) is no longer certified or (ii) is no longer in the
8 employment of the certifying municipality.

9 (d) Any person who violates the provisions of this
10 subsection shall be guilty of a Class I misdemeanor.

11 (e) The Department of Revenue shall not be held liable by
12 any person for an impermissible disclosure by a municipality or any
13 agent or employee thereof of any information obtained pursuant to a
14 review under this subsection.

15 ~~(14)~~ (15) In all proceedings under the Nebraska Revenue
16 Act of 1967, the Tax Commissioner may act for and on behalf of the
17 people of the State of Nebraska. The Tax Commissioner in his or her
18 discretion may waive all or part of any penalties provided by the
19 provisions of such act or interest on delinquent taxes specified in
20 section 45-104.02, as such rate may from time to time be adjusted.

21 ~~(15)(a)~~ (16)(a) The purpose of this subsection is to set
22 forth the state's policy for the protection of the confidentiality
23 rights of all participants in the system operated pursuant to
24 the streamlined sales and use tax agreement and of the privacy
25 interests of consumers who deal with model 1 sellers.

26 (b) For purposes of this subsection:
27 (i) Anonymous data means information that does not

1 identify a person;

2 (ii) Confidential taxpayer information means all
3 information that is protected under a member state's laws,
4 regulations, and privileges; and

5 (iii) Personally identifiable information means
6 information that identifies a person.

7 (c) The state agrees that a fundamental precept for model
8 1 sellers is to preserve the privacy of consumers by protecting
9 their anonymity. With very limited exceptions, a certified service
10 provider shall perform its tax calculation, remittance, and
11 reporting functions without retaining the personally identifiable
12 information of consumers.

13 (d) The governing board of the member states in the
14 streamlined sales and use tax agreement may certify a certified
15 service provider only if that certified service provider certifies
16 that:

17 (i) Its system has been designed and tested to ensure
18 that the fundamental precept of anonymity is respected;

19 (ii) Personally identifiable information is only used and
20 retained to the extent necessary for the administration of model 1
21 with respect to exempt purchasers;

22 (iii) It provides consumers clear and conspicuous
23 notice of its information practices, including what information
24 it collects, how it collects the information, how it uses the
25 information, how long, if at all, it retains the information, and
26 whether it discloses the information to member states. Such notice
27 shall be satisfied by a written privacy policy statement accessible

1 by the public on the web site of the certified service provider;

2 (iv) Its collection, use, and retention of personally
3 identifiable information is limited to that required by the member
4 states to ensure the validity of exemptions from taxation that are
5 claimed by reason of a consumer's status or the intended use of the
6 goods or services purchased; and

7 (v) It provides adequate technical, physical, and
8 administrative safeguards so as to protect personally identifiable
9 information from unauthorized access and disclosure.

10 (e) The state shall provide public notification to
11 consumers, including exempt purchasers, of the state's practices
12 relating to the collection, use, and retention of personally
13 identifiable information.

14 (f) When any personally identifiable information that has
15 been collected and retained is no longer required for the purposes
16 set forth in subdivision ~~(15)(d)(iv)~~ (16)(d)(iv) of this section,
17 such information shall no longer be retained by the member states.

18 (g) When personally identifiable information regarding an
19 individual is retained by or on behalf of the state, it shall
20 provide reasonable access by such individual to his or her own
21 information in the state's possession and a right to correct any
22 inaccurately recorded information.

23 (h) If anyone other than a member state, or a person
24 authorized by that state's law or the agreement, seeks to discover
25 personally identifiable information, the state from whom the
26 information is sought should make a reasonable and timely effort to
27 notify the individual of such request.

1 (i) This privacy policy is subject to enforcement by the
2 Attorney General.

3 (j) All other laws and regulations regarding the
4 collection, use, and maintenance of confidential taxpayer
5 information remain fully applicable and binding. Without
6 limitation, this subsection does not enlarge or limit the state's
7 authority to:

8 (i) Conduct audits or other reviews as provided under the
9 agreement and state law;

10 (ii) Provide records pursuant to the federal Freedom of
11 Information Act, disclosure laws with governmental agencies, or
12 other regulations;

13 (iii) Prevent, consistent with state law, disclosure of
14 confidential taxpayer information;

15 (iv) Prevent, consistent with federal law, disclosure or
16 misuse of federal return information obtained under a disclosure
17 agreement with the Internal Revenue Service; and

18 (v) Collect, disclose, disseminate, or otherwise use
19 anonymous data for governmental purposes.

20 Sec. 2. Section 77-27,144, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-27,144 The Tax Commissioner shall collect the
23 tax imposed by any incorporated municipality concurrently with
24 collection of a state tax in the same manner as the state tax is
25 collected. The Tax Commissioner shall remit monthly the proceeds
26 of the tax to the incorporated municipalities levying the tax,
27 after deducting the amount of refunds made and three percent of the

1 remainder to be credited to the Municipal Equalization Fund. The
2 Tax Commissioner shall keep full and accurate records of all money
3 received and distributed under the provisions of the Local Option
4 Revenue Act. When proceeds of a tax levy are received but the
5 identity of the incorporated municipality which levied the tax is
6 unknown and is not identified within six months after receipt, the
7 amount shall be credited to the Municipal Equalization Fund. The
8 municipality may request the names and addresses of the retailers
9 which have collected the tax as provided in subsection (13) of
10 section 77-2711 and may certify a municipal employee to request
11 and review confidential sales tax returns and sales tax return
12 information as provided in subsection (14) of section 77-2711.

13 Sec. 3. Original section 77-27,144, Reissue Revised
14 Statutes of Nebraska, and section 77-2711, Revised Statutes
15 Cumulative Supplement, 2010, are repealed.